

EXHIBIT 3

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
WICHITA FALLS DIVISION**

FRANCISCAN ALLIANCE, INC., *et al.*,

Plaintiffs,

v.

XAVIER BECERRA, *et al.*,

Defendants.

No. 7:16-CV-00108-O

**DECLARATION OF
BRIAN E. ROBISON**

1. My name is Brian Robison. I am over the age of 18 and have personal knowledge of the contents of this declaration.

2. I am a Partner with the law firm of Brown Fox PLLC, which has offices in Dallas and Frisco, Texas.

3. Before that, I was a Partner with the law firm of Gibson, Dunn & Crutcher LLP (“Gibson Dunn”) in Dallas, where I practiced for over ten years. Gibson Dunn currently has twenty offices worldwide. While with Gibson Dunn, I was consistently listed in the publication *Best Lawyers in America* and in the Chamber’s and Partners lawyer rankings, and I handled a wide range of complex business-litigation matters, including class actions and antitrust cases. I also worked on pro bono matters for religious-liberty organizations like The First Liberty Institute and The Alliance Defending Freedom, including a case in which the Supreme Court of the United States issued an opinion in our client’s favor.

4. Before my time at Gibson Dunn, I was a Partner with the law firm of Vinson & Elkins LLP, also in Dallas. Vinson & Elkins currently has twelve offices worldwide. While I was with Vinson & Elkins, I was one of the co-leaders of the nationwide antitrust practice group, and I handled a wide range of complex business-litigation matters, including class actions, antitrust cases, RICO cases, and cases involving claims

of fraud, breach of fiduciary duty, and breach of contract. I also was the lead lawyer on several pro bono cases (including one in which we prevailed at trial) on behalf of Advocates for Community Transformation, a local Christian non-profit that empowers citizens in high-crime neighborhoods to work with the police force and court system to reduce crime and transform communities by bringing slum lords and drug dealers to justice.

5. I began practicing in private law firms in 1996, following a clerkship on the Supreme Court of Texas with Justice John Cornyn.

6. Overall, I have broad experience as a trial lawyer in Dallas, having practiced in the area for over twenty-five years, having taken civil and criminal cases to trial, and having argued before state courts of appeals. The vast majority of my experience involves litigation at large international law firms.

7. Given my experience, I have become familiar with the billing rates for attorneys at my firm and other firms with federal trial and appellate litigation expertise.

8. I am also familiar with the billing rates charged by expert attorneys that practice constitutional law at the trial and appellate levels.

9. As part of my experience as a litigator, I have become familiar with the work of the Becket Fund for Religious Liberty (“Becket Fund”). Becket Fund attorneys are well-known as expert religious-liberty litigators, bringing cases at all levels of the federal courts—including the Supreme Court of the United States. In my estimation, they are the best law firm in the nation specialized in religious-liberty litigation. The Becket Fund has achieved a remarkable level of success at the Supreme Court—including prevailing in eight merits cases over the past decade—for clients from a variety of religious traditions, including Protestants, Catholics, Jews, Muslims, and others.

10. The Becket Fund has also achieved significant success in federal appellate courts and state supreme courts. In 2021 and 2022 alone, Becket has won at least ten

significant victories at the Fifth Circuit, Seventh Circuit (twice), Eighth Circuit (thrice), Ninth Circuit (twice), the Indiana Supreme Court, and the Texas Supreme Court.

11. For its successful advocacy at appellate courts across the nation, the Becket Fund was recognized by the *National Law Journal* as a 2020 member of the “Appellate Hot List.” The Becket Fund was the first non-profit law firm chosen since the list’s creation.

12. I understand that the Becket Fund was retained to assist with the above-styled case, which involved challenges under the Religious Freedom Restoration Act and Administrative Procedure Act to a federal statute and HHS regulations requiring healthcare providers to perform and insure gender-transition procedures and abortions. The Becket Fund’s expertise in religious-liberty litigation was crucial in securing their client’s permanent injunction in this complex case.

13. Based on my experience working at international law firms in the Dallas-Fort Worth area, it would be extraordinarily difficult, if not impossible, to bring in experienced counsel from an international law firm to litigate such a novel and complex case, particularly given the case’s hot-button subject matter.

14. A large international law firm would be the most likely candidate for having the resources to staff, litigate, and win a case like this. But a case like this one would likely have to go through the *pro bono* approval process at an international law firm given the non-pecuniary nature of the claims and the inability of religious nonprofits to pay a firm’s customary rates. And given my own experience litigating and trying to get approval to pursue *pro bono* cases at these types of firms, it is highly unlikely that a large international law firm would agree to take on a case like this. The controversial subject matter, coupled with the longevity and complexity of the litigation (six years and multiple appeals to reach a final resolution), would mean most firms

with the requisite experience would be either unable or unwilling to litigate a case like this one.

15. I have reviewed the billing rates sought by the Becket Fund attorneys in the above-captioned matter in support of Plaintiffs' fee petition. I have also reviewed the resumes and experience of each of the attorneys who worked on this matter. Based on my experience litigating in the Dallas-Fort Worth area, it is my opinion that the rates the Becket Fund proposes for its attorneys are reasonable.

16. I understand that the rates the Becket Fund is proposing, which are based on their understanding of prevailing market rates in the Northern District of Texas, are as follows:

	2016 Rate	2017 Rate	2018 Rate	2019 Rate	2020 Rate	2021 Rate	2022 Rate
Daniel Chen ('16)	N/A	N/A	N/A	N/A	\$515/hour	\$610/hour	\$610/hour
Diana Thomson ('09)	\$705/hour	\$705/hour	N/A	N/A	N/A	N/A	N/A
Joseph Davis ('14)	N/A	N/A	N/A	\$610/hour	\$610/hour	\$705/hour	\$705/hour
Lori Windham ('05)	\$800/hour	\$800/hour	N/A	N/A	N/A	N/A	N/A
Luke Goodrich ('04)	\$800/hour	\$800/hour	\$905/hour	\$905/hour	\$905/hour	\$905/hour	\$905/hour
Mark Rienzi ('00)	\$905/hour	\$905/hour	\$905/hour	\$1,050/hour	\$1,050/hour	\$1,050/hour	N/A
Stephanie Barclay ('11)	\$610/hour	\$610/hour	N/A	N/A	N/A	N/A	N/A
Rachel Busick ('15)	\$420/hour	\$420/hour	N/A	N/A	N/A	N/A	N/A
Paralegals	\$210/hour	\$210/hour	\$210/hour	\$210/hour	\$210/hour	\$210/hour	\$210/hour

17. In light of the religious-liberty expertise that these lawyers brought to the task, the prevailing market rates in the Northern District of Texas, the nature and

complexity of this litigation, and the success obtained for the Becket Fund's client, it is my opinion that these rates are reasonable.

18. "A reasonable hourly rate is the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." *SEC v. Narayan*, No. 16-cv-1417, 2019 WL 13074285, at *1 (N.D. Tex. Sept. 30, 2019).

19. Given their experience and expertise, Becket Fund attorneys would be able to charge similar or higher rates as attorneys litigating at large international law firms. That is especially true given the nature and complexity of this case, which took six years and multiple appeals to the Fifth Circuit to secure a permanent injunction.

20. The Becket Fund's proposed billing rates are lower than the rates my two prior firms and other firms with which I am familiar would charge their clients for attorneys of comparable seniority and expertise on a similar matter.

21. I am also aware of comparable practitioners that charge significantly higher rates, including between \$1,085-\$1,895/hour for law firm partners and between \$625-\$1,195/hour for associates. See Decl. of Erin E. Murphy in Supp. of Debtors' App. for the Retention and Employment of Kirkland & Ellis LLP, *In re: Nat'l Rifle Assoc. of Am. and Sea Girt LLC*, No. 21-30085, ECF No. 173-2 at 4 (N.D. Tex. Feb. 17, 2021).

22. In a recent bankruptcy case in the District of New Jersey, the Department of Justice noted the prevailing rates at numerous large international law firms, including Hogan Lovells US LLP ("Hogan Lovells"); Jones Day; Skadden Arps Slate Meager & Flom LLP ("Skadden"); Weil, Gotshal & Manges LLP ("Weil"); King & Spaulding, LLP; Shook Hardy & Bacon, LLP; and Orrick, Harrington & Sutcliffe, LLP ("Orrick"). Objection of the U.S. Trustee to Debtor's Application for Retention of Hogan Lovells as Special Counsel, *In re: LTL Management, LLC*, No. 21-30589, ECF No. 2324 ¶ 22 (D.N.J. May 20, 2022).

23. At Hogan Lovells, the discounted hourly rate for partners was between \$950 and \$2,465/hour, the discounted hourly rate for counsel was between \$910 and \$1,735/hour, and the discounted rate for associates was between \$605 and \$1,055/hour. *Id.* ¶ 21.

24. Though the Department of Justice objected to the Hogan Lovells rates, it did not object to the rates of other large international law firms that charged rates higher than the Becket Fund proposes for the above-styled case. Jones Day billed at a rate up to \$1,350/hour, Skadden's hourly range for partners was \$900 to \$1,875/hour, Weil's hourly range for partners was \$1,150 to \$1,795/hour, and Orrick's hourly range for counsel and partners was \$805 to \$1,750/hour. *Id.* ¶ 23.

25. A partner in the Houston office of Gibson Dunn also recently explained that his hourly rate was \$1,385/hour and that associates in Gibson Dunn's Houston office charge between \$800 and \$1,000/hour. Decl. of Collin Cox, *Ross Dress for Less, Inc. v. ML Development LP*, No. 20-cv-978, ECF No. 80-1 ¶ 5 (S.D. Tex. May 6, 2022).

26. Finally, the Becket Fund's requested attorney's fees are reasonable when compared to what other courts in smaller legal markets have actually awarded Becket Fund attorneys in similar litigation. In *Intervarsity Christian Fellowship v. University of Iowa* and *Business Leaders in Christ v. University of Iowa*, the United States District Court for the Southern District of Iowa, Davenport Division, held that a public university violated the constitutional rights of religious student organizations by selectively deregistering them based on their religious beliefs. The court awarded attorney's fees and found that a rate of \$914/hour for a Becket Fund attorney with twenty years of experience and a rate of \$759/hour for a Becket Fund attorney with thirteen years of experience was reasonable. *Intervarsity Christian Fellowship v. Univ. of Iowa*, No. 18-cv-80, Dkt. No. 101 at 2 n.1 (S.D. Iowa Nov. 18, 2021); *Bus. Leaders in Christ v. Univ. of Iowa* ("BLinC"), No. 17-cv-80, Dkt. No. 147 at 3 (S.D. Iowa, Nov. 10, 2021). The court explained that "[a]lthough the rates requested for

Plaintiff's out of state counsel are significantly higher, between \$759 and \$914 for the two attorneys, they are reasonable given the complex nature of the issues in this case and the extensive experience Plaintiff's counsel has in constitutional litigation." *BLinC*, No. 17-cv-80, Dkt. No. 147 at 3.

27. The attorneys in this case have similar experience to the attorneys in the *Intervarsity* and *BLinC* litigation. Yet the legal market in the Dallas-Fort Worth area is significantly larger and more sophisticated than the legal market in Davenport, Iowa. Thus, if these rates were deemed reasonable by the federal court in Davenport, Iowa, then slightly higher rates would be reasonable in Dallas-Fort Worth.

28. In conclusion, based on my knowledge and experience litigating cases in the Northern District of Texas, my familiarity with the hourly rates charged by firms in this legal market, the qualifications of the Becket Fund attorneys involved in this litigation, the nature and complexity of this litigation, and the success obtained for the client, it is my opinion that the Becket Fund's requested rates are reasonable.

I declare under penalty of perjury under the laws of the United States of America and of this Court that the foregoing is true and correct.

Dated: December 21, 2022



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